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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BALTAZAR CULBADORA FEDALIZO,

Defendant and Appellant.

B264538

(Los Angeles County
Super. Ct. No. KA108474)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Wade D. Olson, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)
Affirmed.

Baltazar Culbadora Fedalizo, in pro. per., and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

After waiving his rights to a preliminary hearing and jury trial, Baltazar Culbadora Fedalizo pleaded no contest to one felony count of counterfeiting a seal (Pen. Code, § 472)¹ and admitted he had violated probation, which had been ordered following his conviction earlier that year in another case (Super. Ct. L.A., no. KA103656). Pursuant to a negotiated agreement, the trial court sentenced Fedalizo to three years in county jail for his offenses in the prior matter (burglary and receiving stolen property) and a concurrent term of 365 days for counterfeiting a seal.² In accordance with the agreement, the court awarded Fedalizo 346 days of presentence custody credit against the three-year sentence, which included 34 days (17 actual days plus 17 days of conduct credit) for the time spent in custody following his arrest and revocation of probation for counterfeiting a seal.

On February 6, 2015 Fedalizo, representing himself, filed a request to recall his sentence under section 1170, subdivision (d), on the ground he should have been awarded 34 days of presentence custody credit against his concurrent sentence of 365 days for counterfeiting a seal. In denying the request on March 5, 2015 the trial court stated, as one of its reasons, that Fedalizo's "sentence is pursuant to an agreed upon disposition between the defense and the [P]eople." Fedalizo filed a timely notice of appeal.

Also on February 6, 2015, and again on February 10, 2015, Fedalizo filed duplicate petitions seeking to reduce his felony conviction for counterfeiting a seal to a misdemeanor under Proposition 47, the Safe Neighborhoods and Schools Act (§ 1170.18). The trial court denied the petitions, finding Fedalizo was not eligible for resentencing under Proposition 47. Fedalizo filed a timely notice of appeal from that order as well. Both notices of appeal were received by this court on the same date and were given the same case number.

We appointed counsel to represent Fedalizo on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On August 19,

¹ Statutory references are to the Penal Code.

² As part of the negotiated agreement Fedalizo remained on probation in a third case, a November 14, 2014 conviction for burglary in Lancaster (Super. Ct. L.A., no. MA061066).

2015 we advised Fedalizo he had 30 days within which to submit any contentions or issues he wished us to consider.

On May 6 and September 8, 2015 we received from Fedalizo hand-printed responses, one with an attached exhibit. Fedalizo contends the value of the seal he counterfeited was less than \$950, making him eligible for resentencing under Proposition 47, and the trial court failed to award him presentence custody credit in this case.

Proposition 47 (1) requires a misdemeanor sentence instead of a felony sentence for certain drug possession offenses; (2) requires a misdemeanor sentence instead of a felony sentence for the crimes of petty theft, receiving stolen property and forging/writing bad checks when the amount involved is \$950 or less; (3) allows a felony sentence (excluding a defendant from a misdemeanor sentence) for the specified crimes if a defendant has a prior conviction listed under section 667, subdivision (e)(2)(C)(iv), or a prior conviction for an offense requiring sex offender registration under section 290; (4) requires resentencing for defendants currently serving felony sentences for the specified crimes unless the trial court finds an unreasonable public safety risk; and (5) provides for designating a felony conviction as a misdemeanor if the individual has completed his or her felony sentence. (See *People v. Shabazz* (2015) 237 Cal.App.4th 303, 308 & fn. 2.)

As it potentially relates to Fedalizo, Proposition 47 added section 473, subdivision (b), to the Penal Code. Pursuant to section 473, subdivision (a), forgery is punishable as either a felony or misdemeanor (a so-called wobbler). Under new subdivision (b) forgery of “a check, bond, bank bill, note, cashier’s check, traveler’s check, or money order,” where the value of the item does not exceed \$950, is only a misdemeanor, punishable by imprisonment in a county jail for not more than one year. However, forgery or counterfeiting a seal, as opposed to a document that states a specific value, was not included within Proposition 47’s new definition of the misdemeanor offense of forgery. Thus, the trial court properly determined Fedalizo did not qualify for recall of his sentence. (See *People v. Gonzales* (2015) 242 Cal.App.4th 35, 40-41 [the

failure to include a particular offense within Proposition 47's listing of theft-related crimes subject to reclassification as a misdemeanor demonstrates an intent to exclude it from the resentencing provisions of the Act].)

As for Fedalizo's claim regarding presentence custody credit, he was eligible to be awarded presentence custody credit against the new offense and the probation violation because both were attributable to the same underlying conduct (see *People v. Williams* (1992) 10 Cal.App.4th 827, 834). However, as reflected in the plea hearing transcript and the trial court's ruling, under the plea agreement Fedalizo's award of presentence custody credit was to be applied solely to the three-year sentence in the earlier superior court case. Thus, Fedalizo was awarded the total amount of presentence custody credit to which he was entitled.³

We have examined the entire record and are satisfied Fedalizo's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment and order are affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.

³ Fedalizo also challenges a trial court ruling from one of his earlier cases. That issue is not properly before us.